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64718—25

In the Supreme Court of the United States

OCTOBER TERM, 1925

No. 139

SIDNEY MANDELBAUM, APPELLANT

v.

THE UNITED STATES OF AMERICA

ON APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS OF LOWER COURTS

The District Court dismissed the cause without opinion (R. 15, 16). On appeal to the United States Circuit Court of Appeals for the Eighth Circuit, that court affirmed the decree of the District Court. (R. 23, 24, 25; 298 Fed. 295.) The cause comes here on an appeal allowed by the Circuit Court of Appeals. (R. 28.)

JURISDICTION

The petition was dismissed by the District Court on May 24, 1923. (R. 15.) An appeal to

the Circuit Court of Appeals for the Eighth Circuit was filed and allowed on June 7, 1923. (R. 16.) The decree of the Circuit Court of Appeals affirming the decision of the District Court was entered March 20, 1924. (R. 25.) An order of the Circuit Court of Appeals allowing an appeal to this Court was filed June 18, 1924. (R. 28.)

The petition in the District Court was filed under authority of paragraph 20 of Section 24 of the Judicial Code. (R. 3.) As the District Court was sitting as a Court of Claims and the suit was one in equity (infra, p. 4), an appeal from its decision should have been taken directly to this Court. (*J. Homer Fritch, Inc.,* v. *United States,* decided Jan. 20, 1919, 248 U. S. 458. *Chase* v. *United States,* 155 U. S. 489, 499.)

The Transfer Act of September 14, 1922, c. 305, 42 Stat. 837, provides:

> If an appeal or writ of error has been or shall be taken to, or issued out of, any circuit court of appeals in a case wherein such appeal or writ of error should have been taken to or issued out of the Supreme Court; or if an appeal or writ of error has been or shall be taken to, or issued out of, the Supreme Court in a case wherein such appeal or writ of error should have been taken to, or issued out of, a circuit court of appeals, such appeal or writ of error shall not for such reason be dismissed, but shall be transferred to the proper court, which

> shall thereupon be possessed of the same and shall proceed to the determination thereof, with the same force and effect as if such appeal or writ of error had been duly taken to, or issued out of, the court to which it is so transferred.

The question is whether, as this case is here on an appeal from the Circuit Court of Appeals, this Court will consider the appeal upon its merits as within the spirit of the Transfer Act. Under the opinion of this Court in the *Wagner Company* v. *Lyndon,* 262 U. S. 226, 231, the Government believes that the case is within the spirit of the Act and that this Court has jurisdiction to consider the appeal.

While the Transfer Act of September 14, 1922, was repealed by the Act of February 13, 1925, c. 229, sec. 13, 43 Stat. 936, 942, it would seem to be applicable to the case at bar, as this case was pending in this Court at the time the Act of February 13, 1925, became effective on May 13th.

STATEMENT

The appellant, plaintiff below, claims to be the owner of fifty-three war-savings certificates with stamps attached, series 1918, of the face value of $5,300, issued by the United States on April 26, 1918, and April 29, 1918, which certificates matured and became payable on January 1, 1923, according to the terms and conditions printed on said certificates. (R. 3, 4, 5.) It is alleged in plaintiff's petition that said certificates were, on

or about April 3, 1922, stolen from his possession and have been lost to him, and they can not now be produced for redemption. (R. 6, par. 10.) It is further alleged that none of the lost certificates was registered as permitted by the regulations of the Treasury Department. (R. 6, par. 9.) Demand was made upon the United States by plaintiff for payment to him of the face value of said lost certificates, which demand has been refused. (R. 5, par. 7.)

A suit in equity was commenced on June 8, 1923, in the United States District Court for the Southern District of Iowa by plaintiff against the United States praying the court to decree the re-execution of the lost war-savings certificates and war-savings stamps attached thereto, and that plaintiff have judgment against the United States for the value thereof—$5,300. (R. 7.)

The United States moved to dismiss plaintiff's bill (a) because the claim does not belong to the class in respect to which the District Court has been given jurisdiction by Section 24, par. 20, of the Federal Judicial Code; and (b) because the petition as amended fails to state facts sufficient in law or equity to constitute a cause of action. (R. 14.)

ARGUMENT

The amended petition fails to state facts sufficient in law or equity to entitle plaintiff to the relief asked

The Circuit Court of Appeals passed over the question of jurisdiction raised by the motion to

dismiss, and affirmed the decree of the District Court on the ground that the bill failed to state facts sufficient in law or equity to entitle the plaintiff to the relief prayed for. (*Mandelbaum* v. *United States,* 298 Fed. 295.)

It is admitted by plaintiff in his assignment of errors (R. 18, IV) and stated in the opinion of the Circuit Court of Appeals (R. 23) that the suit is based upon an express contract between the plaintiff and the United States. The terms of the contract are embodied in the Act of Congress authorizing the issue of War-savings Certificates and Stamps; the regulations promulgated by the Secretary of the Treasury in pursuance thereof, and in the Terms and Conditions printed on the certificates. (See copy of Certificate, R. 11, 13.) The Act approved September 24, 1917, c. 56, sec. 6, 40 Stat. 288, 291, as amended by sec. 2, Act of September 24, 1918, c. 176, 40 Stat. 965, 966, authorizing the Secretary of the Treasury to issue War-savings Certificates and Stamps, reads as follows:

> That in addition to the bonds authorized by section one of this Act and the certificates of indebtedness authorized by section five of this Act, the Secretary of the Treasury is authorized to borrow from time to time, on the credit of the United States, for the purposes of this Act and to meet public expenditures authorized by law, such sum or sums as in his judgment may be necessary, and to issue therefor, at such price

> or prices and upon such terms and conditions as he may determine, war-savings certificates of the United States on which interest to maturity may be discounted in advance at such rate or rates and computed in such manner as he may prescribe. Such war-savings certificates shall be in such form or forms and subject to such terms and conditions, and may have such provisions for payment thereof before maturity, as the Secretary of the Treasury may prescribe. Each war-savings certificate so issued shall be payable at such time, not exceeding five years from the date of its issue, and may be redeemable before maturity, upon such terms and conditions as the Secretary of the Treasury may prescribe. The sum of such war-savings certificates outstanding shall not at any one time exceed in the aggregate $4,000,000,000. It shall not be lawful for any one person at any one time to hold war-savings certificates of any one series to an aggregate amount exceeding $1,000. The Secretary of the Treasury may, under such regulations and upon such terms and conditions as he may prescribe, issue, or cause to be issued, stamps to evidence payments for or on account of such certificates.

Pursuant to the authority granted, the Secretary of the Treasury issued Departmental Circular No. 108, dated January 21, 1918 (three months prior to the purchase of the certificates involved in this suit). Paragraph 2 of said Cir-

cular relates to "lost or destroyed certificates" and provides in part as follows:

> A War-Savings Certificate which has been lost or destroyed will not be paid nor will a duplicate thereof be issued, unless the certificate has been registered in accordance with the regulations and instructions issued by the Postmaster General. In the event of the loss or destruction of a registered certificate the registrant may apply to the post office where the certificate was registered, on forms prescribed by the Postmaster General, either for the issuance of a duplicate certificate or for the payment thereof.

Regulations in relation to the issue, sale, and redemption of war-savings certificates and stamps, and the protection of the purchasers by registration of such certificates, made by the Secretary of the Treasury in pursuance of the statute, have the force and effect of law. (*United States* v. *Sacks*, 257 U. S. 37; *United States* v. *Janowitz*, 257 U. S. 42; *Caha* v. *United States*, 152 U. S. 211, 222.)

Not only does the statute expressly confer upon the Secretary of the Treasury authority to prescribe the conditions of sale and redemption of war-savings certificates, but it is stated on each certificate that payment thereof will be made subject to the *terms and conditions* printed thereon. The "Terms and Conditions" printed on each certificate are as follows (R. 13):

1. This certificate is not a valid obligation unless a United States War-savings Certificate Stamp of the Series of 1918 is affixed hereto.

2. This certificate is of no value except to the owner named hereon and is not transferable.

3. Not more than twenty United States War-savings Certificate Stamps, and only such Stamps of the Series of 1918 may be affixed hereto.

4. This certificate may be registered at any post office of the first, second, or third class, subject to such regulations as the Postmaster General may prescribe. Unless registered, the United States will not be liable if payment be made to a person not the rightful owner.

5. This certificate, if not registered, is payable at any money-order post office, and on January 1, 1923, at the Treasury Department in Washington, but if registered is payable only at the post office where registered. No post office, however, is required to make payment, either on January 1, 1923, or on any other date, until ten days after receiving written demand therefor.

6. The law provides that no one person shall at any one time hold War-savings Certificates to an aggregate amount exceeding One Thousand Dollars.

7. Upon payment hereof, *this certificate must be surrendered* and the receipt *printed hereon must be signed by the owner in the presence of the official to whom sur-*

> *rendered.* In case of death or disability a special receipt must be signed in form prescribed by the Secretary of the Treasury. Upon furnishing evidence of loss of a *registered certificate* satisfactory to the Secretary of the Treasury, the owner thereof shall be entitled to receive payment of the amount for which it shall have been registered. [Italics added.]

Appellant and his assignors purchased the war-savings certificates and stamps involved in this suit with actual notice of the terms and conditions printed thereon, and constructive notice of the provisions of the statute and the regulations issued pursuant thereto.

It is apparent that appellant has not complied with the terms and conditions under which the war-savings certificates were issued, in that he has not presented such certificates for cancellation nor has he signed the receipts printed thereon. Under the terms and conditions of the contract, the United States can not be compelled to pay outstanding war-savings certificates unless such certificates are tendered by the owner for redemption and cancellation.

Ample opportunity was provided holders of war-savings certificates to have their certificates registered for their own protection against loss. Failing to avail themselves of this protective provision, they must bear the burden when loss occurs.

It is submitted that the appellant, the plaintiff below, has not complied with the terms and conditions of the contract and that his petition did not, therefore, state facts sufficient in law or equity to constitute a cause of action.

CONCLUSION

It is respectfully submitted that the decree of the District Court should be affirmed.

WILLIAM D. MITCHELL,
Solicitor General.
IRA LLOYD LETTS,
Assistant Attorney General.
H. B. COX,
Special Assistant to the Attorney General.

OCTOBER, 1925.

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